

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

REGIONS ASSET COMPANY, et al.,)
)
Plaintiffs,)
)
) Civil Action No. 2:06-cv-882-MHT
)
REGIONS UNIVERSITY, INC.)
)
Defendant.)
)

MOTION FOR PROTECTIVE ORDER

COMES NOW the defendant Regions University, Inc. and, pursuant to Rule 26(c), Federal Rules of Civil Procedure, moves this Court for a protective order that the deposition of James Shlesinger, one of defendant's trial counsel of record, not be taken. A copy of the Notice of Deposition for July 10, 2007 is attached hereto as Exhibit A. Defendant submits that this protective order is necessary in order to protect it from annoyance, embarrassment, oppression, and undue burden or expense and for the following reasons:

1. Prior to the application for registration of its trademark "Regions University," which is the subject of this litigation, defendant sought and obtained an opinion of trademark counsel, Mr. James Shlesinger, as to the registerability of that mark for educational services. (Exhibit B). A copy of that opinion has been produced to plaintiff, as

well as the minutes of meetings of representatives of defendant at which this opinion was discussed and the decision made to file for registration.

2. These documents were produced only after the parties had reached an agreement as to the potential effect that such disclosure would have in the litigation. Specifically, in a letter dated February 5, 2007, defendant's counsel wrote to plaintiff's counsel stating the following:

"Request number 2 [requesting the trademark opinion and other documents relating to any trademark search] seeks documents that are subject to the attorney-client privilege. You will note that we filed a privilege log with our initial disclosures that listed such documents. Nevertheless, we are willing to produce these documents so long as we have an express understanding that (a) their production shall not be deemed to be a waiver in any respect of the attorney-client privileges that may apply to other communications either in writing or oral, and (b) there is no contention that either Jim Shlesinger or his law firm is disqualified from the further representation of Regions University by virtue of either of these documents or the opinions expressed in them."

(Exhibit C)(Emphasis added).

3. Plaintiff's counsel replied on February 23, 2007 stating:

"I understand from your letters that you are willing to produce documents and information relating to this advice so long as this waiver does not constitute waiver of attorney-client communications dealing with

other matters and we will not seek to disqualify Mr. Shlesinger or his firm. Both conditions are acceptable."

(Exhibit D)(Emphasis added).

4. Thereafter, in reliance on this stipulation, defendant did produce a copy of Mr. James Shlesinger's written opinion, as well as internal documents of its team meetings which discussed the opinion of counsel and determined to apply for registration of its new name. Defendant has produced all documents which constitute any communications between defendant and its counsel relative to the registerability of the name "Regions University" and upon which defendant relied in adopting and using that name.

5. Additionally, plaintiff's counsel has been given a full opportunity to depose representatives of defendant who were at these team meetings, including the only individual with whom Mr. Shlesinger personally spoke regarding his opinions, Dr. Rex Turner, president of Regions University. A true and correct copy of excerpts from the deposition of Dr. Turner relating to communications with Mr. Shlesinger about his written opinion are attached hereto as Exhibit E. No objections were raised to these questions and the witness fully and fairly answered plaintiff's counsel's line of questioning in this respect.

6. Having full access to all written communication between trademark counsel and his client concerning the availability of the mark, and the opportunity to depose all

individuals who spoke with Mr. Shlesinger or discussed his opinions, plaintiff now seeks to depose Mr. Shlesinger himself. As the following discussion reveals, the law does not permit the deposition of opposing counsel under these circumstances. Such a notice seems designed to attempt to place Mr. Shlesinger in a conflict of interest with his client so as to compel his disqualification in this litigation, in contravention of the parties' stipulation.

7. The deposition of an opposing party's attorney is disfavored and calls for special scrutiny. United States v. Yonkers Board of Education, 946 F.2d 180, 185 (2nd Cir. 1991); West Peninsula Title Company v. Palm Beach County, 132 F.R.D. 301, 302 (S.D. Fla. 1990); DOT Connectors, Inc. v. JB Nottingham & Co., Inc., 2001 WL 34104929 (N.D. Fla. Jan. 22, 2001). As the Eighth Circuit has noted, in a widely adopted opinion:

"Taking the deposition of opposing counsel not only disrupts the adversarial system and lowers the standards of the profession, but it also adds to the already burdensome time and costs of litigation. It is not hard to imagine additional pretrial delays to resolve work product and attorney-client objections, as well as delays to resolve collateral issues raised by the attorney's testimony. Finally, the practice of deposing opposing counsel detracts from the quality of client representation. Counsel should be free to devote his or her time and efforts to preparing the client's case without fear of being interrogated by his or her opponent. Moreover, the "chilling effect" that such practice will have on the

truthful communications from the client to the attorney is obvious.

...

We do not hold that opposing trial counsel is absolutely immune from being deposed. We recognize that circumstances may arise in which the court should order the taking of opposing counsel's deposition. But those circumstances should be limited to where the party seeking to take the deposition has shown that (1) no other means exist to obtain the information than to depose opposing counsel [citations] (2) the information sought is relevant and non-privileged; and (3) the information is crucial to the preparation of the case."

Shelton v. American Motors Corp., 805 F.2d 1323, 1327 (8th Cir. 1986)(emphasis added). For other courts adopting the Shelton criteria, including courts in this circuit, see Nationwide Mutual Insurance Co. v. Home Insurance Co., 278 F.3d 621, 628 (6th Cir. 2002); Boughton v. Cotter Corporation, 65 F.3d 823 (10th Cir. 1995); DOT Connectors, Inc. v. JB Nottingham & Company, Inc., *supra*; Lajoie v. Pavcon, Inc., 1998 WL 526784 (M.D. Fla. 1998); Steinig v. McDonald's Corp., 1998 WL 1064841 (S.D. Fla. 1998).

8. Plaintiff cannot establish its right to depose opposing counsel based on these criteria. First of all, plaintiff cannot establish that "no other means exist to obtain the information than to depose opposing counsel." Plaintiff has been given the written trademark opinion of Mr. Shlesinger and

has deposed the defendant's representatives concerning communication with Mr. Shlesinger and their reliance upon his opinion. Thus, plaintiff has other means of obtaining the information Mr. Shlesinger could supply and has, in fact, employed those means and obtained that information.

9. Moreover, Mr. Shlesinger, by his testimony, can add nothing that is "crucial" to plaintiff's case, and thus the third Shelton criterion cannot be satisfied. Plaintiff cannot contend that it needs to depose Mr. Shlesinger in order to determine his search strategies or other thought processes that were never communicated to the client, because such matters would be completely irrelevant. It is the communication of counsel's advice that is relevant in determining whether the alleged infringer reasonably relied upon such advice in adopting the mark (thus negating some intent to exploit the good will of plaintiff's mark), not what was not communicated. See Frehling Enterprises, Inc. v. International Select Group, Inc., 192 F.3d 1330, 1340 (11th Cir. 1999). The issue is not the competence of the attorney giving the advice, the quality of the advice given, nor whether another attorney might have reached another conclusion. Similarly, the internal thought processes or other notes the attorney may have made, which were never communicated to the client, are not relevant. Rather, the issue is whether the objective communications between the parties demonstrate the

basis for an honest, good faith belief in the client that it could adopt the allegedly infringing mark. Thus, a waiver of the attorney-client privilege with respect to communications between trademark counsel and client, for purposes of showing good faith reliance on that advice and thus no bad faith in the adoption of the mark, does not serve to make discoverable counsel's internal drafts, thought processes and other research not communicated to the client. See Eco Manufacturing, LLC v. Honeywell International, Inc., 2003 WL 1888988 (S.D. Ind. April 1, 2003).

10. Plaintiff also cannot seek to justify the deposition on the grounds that Mr. Shlesinger may have a different version of his oral communications with Dr. Turner. This would be nothing but a fishing expedition. The substance of Mr. Shlesinger's opinions were communicated in writing. The deposition testimony of Dr. Turner establishes that there were no other substantive discussions with Mr. Shlesinger that would have modified or altered those written opinions in any regard. There is no suggestion that Dr. Turner was untruthful or evasive at his deposition. Assuming *arguendo* that Mr. Shlesinger had any different "version" of those conversations, such matters would be of little probative value to the question of Regions University's good faith reliance upon the written opinion of counsel.

11. In any event, if Mr. Shlesinger's deposition were taken for this purpose, or for any other purpose, that testimony would only be useful to the plaintiff if it could be used at trial or in other pretrial proceedings in a manner adverse to the interests of Mr. Shlesinger's client, Regions University. Thus, the deposition testimony, if it has any value at all to plaintiff's case, will put Mr. Shlesinger precisely in the situation that the stipulation reached by counsel was designed to prevent, i.e., a conflict of interest requiring the disqualification of Mr. Shlesinger and his firm in serving as trial counsel for Regions University. See Rule 3.7, Alabama Rules of Professional Conduct (lawyer forbidden from acting as advocate at trial in which lawyer is likely to be a necessary witness). As the Comments to Rule 3.7 note:

"Whether the combination of roles involves an improper conflict of interest with respect to the client is determined by Rule 1.7 or 1.9. For example, if there is likely to be substantial conflict between the testimony of the client and that of the lawyer or a member of the lawyer's firm, the representation is improper." (Emphasis added).

12. In summary, any potential usefulness of the deposition testimony of Mr. Shlesinger to the plaintiff would be adverse to the defendant, placing Mr. Shlesinger in a substantial conflict of interest and prohibiting his further representation of his client. This is a consequence the parties expressly sought to

prevent by their stipulation, upon which defendant relied in agreeing to disclose privileged documents.

WHEREFORE, for all of the above reasons, defendant respectfully requests that the deposition of James Shlesinger be quashed and an order entered that such deposition shall not be taken.

Respectfully submitted,

/s/ VICTOR T. HUDSON
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bill@alabamatrial.com
Hudson & Watts, LLP
Post Office Box 989
Mobile, Alabama 36601

JAMES E. SHLESINGER
Shlesinger, Arkwright &
Garvey LLP
1420 King Street, Suite 600
Alexandria, Virginia 22314

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to:

William G. Pecau, Esq.
Rachel M. Marmer, Esq.
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, NW
Washington, DC 20036

Charles B. Paterson, Esq.
Paul A. Clark, Esq.
BALCH & BINGHAM, LLP

105 Tallapoosa Street, Suite 200
Montgomery, Alabama 36104

/s/ VICTOR T. HUDSON

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

REGIONS ASSET COMPANY,)
REGIONS FINANCIAL CORPORATION,)
and REGIONS BANK)
)
Plaintiffs,)
)
v.) Civil Action No. 2:06-cv-882-MHT
)
REGIONS UNIVERSITY, INC.)
)
Defendant.)

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure, Plaintiffs will take the deposition upon oral examination of James Shlesinger of the law firm of Shlesinger, Arkwright & Garvey LLP, on Tuesday, July 10, 2007, at 9:00 AM at Steptoe & Johnson LLP, 1330 Connecticut Avenue, NW, Washington, DC 20036.

NOTICE IS FURTHER GIVEN THAT the deposition will be transcribed by a certified court reporter and notary public or such other person authorized to administer oaths under the laws of the United States, and shall continue from day to day until completed. All counsel are invited to attend and cross-examine.

NOTICE IS FURTHER GIVEN THAT pursuant to Rule 30(b)(5), the deponent is requested to produce at said examination all documents and tangible things in his possession or

under his custody or control relating to or concerning the matters specified in Schedule A,
attached hereto.

Dated: June 15, 2007

William G. Pecau/RM
One of the Attorneys for Plaintiffs, Regions
Asset Company, Regions Financial
Corporation and Regions Bank

OF COUNSEL:

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Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036
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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing NOTICE OF DEPOSITION on counsel for Defendant by overnight courier on this 15th day of June, 2007 properly addressed to them:

Victor T. Hudson
William W. Watts, III
Hudson & Watts, LLP
Post Office Box 989
Mobile, Alabama 36601-0989

James E. Shlesinger
Shlesinger, Arkwright & Garvey LLP
1420 King Street
Suite 600
Alexandria, Virginia 22314

Rachel M. Marmer

SCHEDULE A

Documents Requested of James Shlesinger

DEFINITIONS AND INSTRUCTIONS

1. "Plaintiffs" or "Regions" means Regions Asset Company, Regions Financial Corporation, Regions Bank, their predecessors, successors, and assigns, and any of their affiliates, officers, directors, agents, employees, or other persons, including, but not limited to, its attorneys, accountants and advisors, acting or purporting to act on its behalf.
2. "Defendant" means Regions University, Inc., its predecessors, successors, and assigns, and any of its affiliates, officers, directors, agents, employees, or other persons, including, but not limited to, its attorneys, accountants and advisors, acting or purporting to act on its behalf.
3. "Person" means, without limiting the generality of its meaning, any natural person, group of natural persons (such as a committee or board of directors), corporation, partnership, unincorporated association, joint venture and any other incorporated or unincorporated business, governmental, public or social entity.
4. "You" means James Shlesinger.
5. "Your Firm" means Shlesinger, Arkwright & Garvey LLP.
6. "And" as well as "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these Requests any information which might otherwise be construed as outside their scope.
7. "Concerning" means containing, consisting of, referring to, supporting, prepared in connection with, used in preparation for, commenting upon, or being in any way legally, logically or factually connected with or pertaining to, in whole or in part, the matter discussed.

8. Whenever appropriate in these Requests, the singular and plural forms of words shall be interpreted interchangeably so as to bring within the scope of these requests any matter which might otherwise be construed to be outside of their scope.

9. If any information requested by these Requests is claimed to be immune from discovery on the grounds of privilege or otherwise:

- a. identify the communication or document;
- b. identify the person or persons making the communication or authoring the document and all persons receiving the information;
- c. specify the type of privilege or other reason asserted for withholding the requested information;
- d. specify the basis for the assertion; and
- e. describe the withheld information to a degree sufficient to enable the court to decide if such claim has been properly invoked.

DOCUMENTS REQUESTED

1. All documents concerning any services performed by You or Your Firm on behalf of Defendant or any advice given by You or Your Firm to Defendant or any of its representatives in connection with Defendant's name change from Southern Christian University in 2006.

2. All documents concerning any information provided to You or Your Firm by Defendant in connection with your representation of Defendant in connection with Defendant's name change from Southern Christian University, including information concerning Regions Bank, Defendant's knowledge of the REGIONS name or mark, the reason the word "regions" and other words were considered, Plaintiffs' Regions University, and Southern Christian University.

3. All documents concerning any trademark or name searches and their results in connection with the Defendant's change of name from Southern Christian University in 2006, including any searches or other inquiries concerning the terms "Regions," "Rex," "Turner," "Masters," "Greystone," "Royale," "Providence," or "Regal."

4. All documents concerning Regions Bank, the REGIONS mark or name, or Plaintiff's Regions University.

5. All documents concerning any opinion or advice provided by You or Your Firm to Defendant in 2006 concerning its change of name or the availability of any term, including the terms "Regions," "Rex," "Turner," "Masters," "Greystone," "Royale," "Providence," or "Regal," alone or with other elements, for registration or use in connection with Defendant's services, products or businesses and any qualification or limitation to such opinion or advice.

6. Any documents concerning the retention or employment of You or Your Firm by Defendant in connection with services or advice concerning the Defendant's name change from Southern Christian University in 2006.

7. All documents concerning the application, registration, use or the possible use for a service, product or business of the following terms "Regions," "Rex," "Turner," "Masters," "Greystone," "Royale," "Providence," or "Regal," alone or with other elements.

Rex Turner

From: Jim Shlesinger [jim@saglip.com]
Sent: Thursday, July 27, 2006 9:59 AM
To: Rex Turner
Subject: Service Mark searches—TURNER UNIVERSITY, REX UNIVERSITY and REGIONS UNIVERSITY

Dear Dr. Turner:

Pursuant to your request, we conducted searches of the United States Patent and Trademark Office (USPTO) records in an effort to determine registrability of each of the above identified marks, for use in association with educational services at the post-secondary level. The searches were performed on our about July 26, 2006, and at the time the searches were conducted, the USPTO records were current through July 12, 2006.

A full report, including copies of the references developed will be mailed to you. Please be advised as follows:

TURNER UNIVERSITY

The references developed include multiple registrations issued to companies associated with Ted Turner for a wide range of products and services, including TURNER, for television programing; TURNER LEARNING, for the production of educational programs designed for school use; TURNER SOUTH, for entertainment and education services; and an expired mark, TURNER ADVENTURE LEARNING, for education and entertainment.

Based on the results, there exists the possibility that the USPTO may refuse registration of your proposed mark on grounds of a likelihood of confusion as to sponsorship or affiliation with one or more of the marks noted above. While there are good arguments which may be presented in favor of the registrability of your proposed mark, there remains some doubt concerning the ability to register TURNER UNIVERSITY, for educational services in light of the registrations developed.

REX UNIVERSITY

Our search did not find any conflicting marks. The closest registration developed is the mark, REX READER, for educational services, namely, providing elementary level reading activities. We believe we can distinguish this mark from your proposed mark. Accordingly, the mark, REX UNIVERSITY, appears to be registrable at this time.

REGIONS UNIVERSITY

The search developed variations of the term "regions" for various educational services. These include the following:

1. REGION 4 EDUCATED SOLUTIONS—for conducting educational training for educators at primary and secondary level schools;
2. REGIONAL CONNECTS—for conducting events for career development services for executive women in the food service industry;
3. NORTH CENTRAL REGIONAL EDUCATIONAL LABORATORY—for education services;
4. REGIONAL LEADERSHIP INSTITUTE—for providing classes, seminars, etc in the field of leadership;
5. REGIS UNIVERSITY—educational services (university level);
6. REGENT UNIVERSITY—educational services (university level);

EXHIBIT B**RU 178**

7/27/2006

7. REGAL UNIVERSITY—educational services (university level); and
8. REGENTS OF THE UNIVERSITY OF MINNESOTA—educational services (university level).

The records suggest that your proposed mark is registerable. The term "region" is used in a geographic context in the first four marks listed above, suggesting weakness in the strength of these marks. The remaining marks evidence weakness in marks which are otherwise different in spelling, pronunciation, or meaning.

The sophistication of the consumer or user of higher educational services reduces the likelihood that confusion would result from the concurrent use of the marks in question. Based on the results of the search, we are of the opinion that the mark, REGIONS UNIVERSITY, is registerable for educational services, namely, providing instruction at the university level.

In conclusion, the marks, REX UNIVERSITY, and REGIONS UNIVERSITY, appear to be registrable. Please consider filing applications for one or both of these marks at this time.

Very Truly Yours,

James E. Shlesinger
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703-836-5288 fax
jim@sagllp.com

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RU 179

7/27/2006

HUDSON & WATTS, L.L.P.

ATTORNEYS AT LAW

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February 5, 2007

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WILLIAM W. WATTS, III*

ALSO ADMITTED IN
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William G. Pecau, Esq.
STEPTOE & JOHNSON, LLP
1330 Connecticut Avenue, NW
Washington, DC 20036

RE: Regions Asset Company v. Regions University, Inc.
Civil Action No. 2:06-CV-882-MHT

Dear William:

I have reviewed your discovery which was sent under cover of a letter dated January 29. Even though there are 17 numbered interrogatories (Interrogatory No. 11 was omitted) there are 42 subparts. Additionally, by utilizing the definition of "identify," four other elements are added resulting in an increase of 33 additional subparts for a grand total of 75 subparts. Only 50 are permitted. Nevertheless, we are willing to respond to all of these interrogatories so long as you agree that the plaintiff will respond to an equal number propounded by us.

As to the requests for production, we also have encountered some difficulty. Request No. 5 is nonsensical as phrased. Request Nos. 13 and 16 are over broad. We are willing to produce representative documents; but not "all" documents because to do so would be unduly burdensome. Similarly, Request Nos. 11, 14 and 15 are overly broad.

Request No. 17 is beyond the scope of Rule 26. The Pretrial Order provides for the exchange of expert reports. Nevertheless, it is local practice for lawyers to agree that prior to the expert's deposition the expert's entire file will be made available for counsel opposite. We would be willing to make such an agreement in this case.

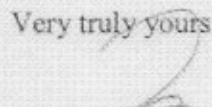
Request No. 2 seeks documents that are subject to the attorney-client privilege. You will note that we filed a privilege log with our initial disclosures that listed such documents. Nevertheless, we are willing to produce these documents so long as we have an express understanding that (a) their production shall not be deemed to be a waiver in any respect of the attorney-client privilege as it may apply to other communications either in writing or oral, and (b) there is no contention that either Jim Shlesinger or his law firm is disqualified from the further representation of Regions University by virtue of either these documents or the opinions expressed in them. Jim tells me that this should not be a problem because sophisticated patent

EXHIBIT C

counsel such as you and he usually handle this issue in a manner that does not inconvenience either attorney.

I find, as you must, that it is highly preferable for counsel to resolve discovery disputes. I am pleased to say that in my practice attorneys are usually collegial and it is rarely necessary to submit any discovery dispute to the court. I look forward to working with you in this spirit.

Very truly yours


VICTOR T. HUDSON
For the Firm

VTH/jac

STEPTOE & JOHNSON LLP

ATTORNEYS AT LAW

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CONFIRMATION

February 23, 2007

Via FACSIMILE (251) 432-0073

Victor T. Hudson
Hudson & Watts, L.L.P.
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Suite 2500
Mobile, AL 36602

RE: Regions Asset Company v. Regions University, Inc.
Case No. CV-06-882-MHT

Dear Tom:

As I indicated in my voice mail message today, we appreciate your letters of February 5 and 7 and the apparent spirit in which they were written. We do as a matter of course try to resolve discovery disputes informally between counsel.

Although it is not clear to us how you arrive at a grand total of 75 subparts to Regions' interrogatories, Regions is willing to respond to an equal number of subparts of Regions University interrogatories counted in the same manner as you seem to have counted Regions' interrogatories.

Turning to Regions' requests for production, Request No. 5 makes imminent sense because it simply asks for documents in Regions University's possession concerning Regions Bank or Regions' REGIONS mark. This should be a relatively small and identifiable universe of documents. However, if there is some ambiguity in the request that I fail to appreciate, I would be glad to discuss it with you.

We do not think that Request Nos. 13 and 16 are overly broad; rather, they are specifically limited to documents used to determine: (1) expenditures by Regions University for marketing, advertising, promoting or publicizing Regions University using the REGIONS name and mark, alone or with other elements, and (2) the total amount of student loans obtained for Regions

EXHIBIT D

STEPTOE & JOHNSON LLP

Victor T. Hudson, Esq.
February 23, 2007
Page 2

University students in the years 2006 and 2007. Representative documents will not suffice because we do not want documents that, for example, are representative of expenditures. We are seeking documents that can be used to determine expenditures. If Regions University has a reason why it thinks these requests are overly burdensome, we will listen to its concerns and try to work out a manner to get the information sought and not overly burden the school.

Request Nos. 11, 14 and 15 do not strike us as overly broad, but we are willing to listen to Regions University's concerns with respect to these requests.

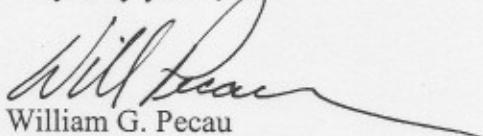
For Request No. 17, we would be glad to discuss with you what the parties will agree to mutually exchange with respect to experts retained for this proceeding.

As for attorney-client privilege, and as I told Mr. Shlesinger, we do not believe that any searches conducted are privileged under any circumstance. With respect to the advice Mr. Shlesinger or other attorneys gave to Regions University about the searches concerning or the availability of the REGIONS mark, we believe that attorney-client privilege has been waived because of public remarks and communications made referring to the specific advice given by counsel to the school concerning such matters.

I understand from your letters that you are willing to produce documents and information relating to this advice so long as this waiver does not constitute waiver of attorney-client communications dealing with other matters and that we will not seek to disqualify Mr. Shlesinger or his firm. Both conditions are acceptable.

I look forward to discussing with you the specifics of the issues you raise.

Very truly yours,



William G. Pecau

Deposition of Rex Turner, Ed.D.

May 15, 2007

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2	FOR THE MIDDLE DISTRICT OF ALABAMA				
3	NORTHERN DIVISION				
4					
5	REGIONS ASSET COMPANY,				
6	Plaintiff,				
7	Vs. CIVIL ACTION NO.				
	2:06CV882-MHT				
8	REGIONS UNIVERSITY, INC.,				
9	Defendant.				
10					
11	*****				
12					
13	DEPOSITION OF REX A. TURNER, JR., Ed.D,				
14	taken pursuant to stipulation and agreement before				
15	Lisa J. Nix, Registered Professional Reporter and				
16	Commissioner for the State of Alabama at Large, in				
17	the Law Offices of Balch & Bingham, Suite 200, 105				
18	Tallapoosa Street, Montgomery, Alabama on Tuesday,				
19	May 15, 2007, commencing at approximately 9:00 a.m.				
20					
21	*****				
22					
23					
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1	APPEARANCES				
2					
3	FOR THE PLAINTIFF:				
4	Mr. William G. Pecau				
5	Ms. Rachel M. Marmer				
6	STEPTOE & JOHNSON				
7	Attorneys at Law				
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11	Mr. Charles B. Paterson				
12	BALCH & BINGHAM				
13	Attorneys at Law				
14	Suite 200				
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16	Montgomery, Alabama 36104				
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18	FOR THE DEFENDANT:				
19	Mr. Victor T. Hudson				
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21	Attorneys at Law				
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23	One St. Louis Centre				
	Mobile, AL 36602				

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<p>1 A. I do not think it is a yes-no question. I 2 think it is a confused question because at 3 the point that I thought Regions University 4 was of a service, I had already learned 5 something that I had not learned prior.</p> <p>6 MR. PECAU: I think now would be a 7 good time to take a break. 8 Let's have some lunch. 9 (Lunch recess was taken.) 10 (Exhibit 28 was marked for 11 identification.)</p> <p>12 Q. Dr. Turner, let me show you what's been 13 marked as Exhibit 28. Do you recognize 14 this?</p> <p>15 A. Yes, I do.</p> <p>16 Q. And is Jim Shlesinger the person you've 17 been referring to as your patent attorney?</p> <p>18 A. Is it patent or trademark? I'm not --</p> <p>19 Q. Well, people confuse patents and 20 trademarks. Usually, they're referred to 21 as trademark attorneys, but sometimes 22 they're patent attorneys.</p> <p>23 A. I consider him a trademark attorney.</p>	<p>1 MR. HUDSON: I think he's asking 2 about whether the university 3 had or not.</p> <p>4 A. Well, I'll just go back and put in a 5 capsule. He originally did Southern 6 Christian University trademark for us. And 7 we had some discussions relative to Masters 8 University, nothing in writing, because 9 most all that work was done by Jeff Foshee 10 and Dr. White. And it was on that Monday 11 morning that I called him and asked him to 12 do this review for us.</p> <p>13 Q. So did you in around July 27, 2006, feel a 14 lot of pressure to choose a name? You said 15 you were a couple of months behind in 16 choosing a name.</p> <p>17 MR. HUDSON: Object to the form.</p> <p>18 A. Well, we needed to have changed our name 19 seven months before, and so this was a 20 means by which to try to resolve the issue.</p> <p>21 Q. So you did feel some time pressure to 22 choose a name; is that correct?</p> <p>23 MR. HUDSON: Object to the form.</p>
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<p>1 Q. Okay.</p> <p>2 A. I don't know if he does patents or not, but 3 I consider him a trademark attorney.</p> <p>4 Q. Now, were you the person at -- I guess it 5 was Southern Christian University then who 6 was dealing directly with Mr. Shlesinger?</p> <p>7 A. I'm not the only one who has talked to 8 Mr. Shlesinger. Dr. White has talked with 9 him, but I am the one that specifically 10 called him on Monday morning relative to 11 this document, 28, that -- and which I 12 asked him to give me a written opinion of 13 Turner University, Rex University, and 14 Regions University. And this is his 15 response on Thursday morning of July the 16 27th.</p> <p>17 Q. So you called him up on Monday morning of 18 that week?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And you gave him those three names?</p> <p>21 A. Yes.</p> <p>22 Q. Had you dealt with Mr. Shlesinger 23 beforehand?</p>	<p>1 A. I just -- I mean, as an institution, I knew 2 that we needed to change our name.</p> <p>3 Q. Okay. Did you call Mr. Shlesinger 4 directly?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And what did you tell him that 7 Monday morning?</p> <p>8 A. I just simply called and said I have made a 9 review of these marks -- I said marks. I 10 have made a review of these names, and when 11 I'm talking about names, I'm talking about 12 university: Turner University, Rex 13 University, and Regions University. And I 14 would like for him to give us a trademark 15 opinion.</p> <p>16 Q. Opinion as to what?</p> <p>17 A. As to the registerability of these names.</p> <p>18 Q. Did you ask him to do a search?</p> <p>19 A. What do you mean by -- or how do you define 20 search?</p> <p>21 Q. Did you ask him to search whether the mark 22 was available?</p> <p>23 A. Yes.</p>

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<p>1 Q. Did he tell you that there are different 2 kinds of searches that could be done? 3 A. We did not go into that. 4 Q. Did you ask him just to search the Patent 5 and Trademark Office records? 6 A. I think it was understood that he knew that 7 we were trying to change our name. He knew 8 the impact of such a decision, and I was 9 expecting him to do whatever appropriate 10 search that he was supposed to do to give 11 me some kind of definitive statement as to 12 the registerability of that. 13 Q. Did he ask you if you wanted to do -- have 14 a search conducted of uses of the marks 15 that -- of the marks that might not be 16 registered? 17 A. I think you're going to have to explain 18 that a little bit from your trademark 19 background for my lack of knowledge. 20 Q. It's possible to search marks in addition 21 to marks that are registered. It's often 22 done. Did he suggest to you that you 23 should do a search of marks that weren't</p>	<p>1 talk to any of the other administrators 2 about these three names? 3 A. Well, obviously, Turner and Rex have been 4 out there and have been understood out 5 there and have been out there for -- you 6 know, but I don't know that -- 7 Now, Turner University has been, but 8 Rex University, in no special way had it 9 really been discussed because it was not 10 even up for consideration, and the same is 11 true of Regions. 12 Q. So do you recall discussing with anyone 13 prior to speaking to Mr. Shlesinger 14 about -- I mean, in addition to your wife 15 and your sister about the possibility of 16 adopting Regions as a mark? 17 A. No, I did not talk to anybody else. 18 Q. Did your wife or your sister mention the 19 bank when you said the name Regions 20 University? 21 A. I do not recollect. I don't recollect that 22 they did. They may have, but they -- I 23 don't recollect that.</p>
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<p>1 registered? 2 A. Give me an example. 3 Q. Well, Masters Bible College is not a 4 registered mark. There are means of 5 searching marks that aren't registered 6 marks. Did you ask him to do that kind of 7 search? 8 A. I do not recollect any discussion of that. 9 I think he understood the import because of 10 the names and the potential thereof, and so 11 that's all I know. That's all I can speak 12 to. 13 Q. Do you recall discussing with him the price 14 of different kinds of searches? 15 A. You know, I don't -- he told me 16 approximately about how much it would be. 17 But, you know, I don't even -- I never saw 18 the bill. I do not know how much he 19 charged and ... 20 Q. Did you tell him that there was a time 21 limit when you needed his opinion by? 22 A. I did not give him a timeline. 23 Q. Prior to talking to Mr. Shlesinger, did you</p>	<p>1 Q. When you spoke to -- Now, you know Regions 2 is the largest bank in Montgomery, right? 3 A. Well, I didn't know that personally. No 4 one has told me that. Colonial has a 5 mighty big presence here in this city with 6 their having their headquarters here. I 7 know that Regions is prominent, but I also 8 know that there are other banks here that 9 are just as prominent as well. 10 Q. Prior to speaking to Mr. Shlesinger, do you 11 remember in that summer, stories on 12 television and in newspapers about the 13 merger of AmSouth and Regions? 14 A. Yes, I knew about that, and I also -- you 15 need to know that I said to Mr. Shlesinger 16 on that Monday morning, there is a Regions 17 Bank here. 18 Q. So you made him aware that Regions was a 19 prominent bank in your community? 20 A. I didn't say -- 21 MR. HUDSON: Object to the form of 22 the question. 23 A. I didn't say prominent. I just said</p>

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1 there's a Regions Bank.	1 Turner, that you folks have used Turner
2 Q. Did you describe how big Regions was to	2 School of Theology for a number of years?
3 Mr. Shlesinger at all?	3 A. You know, I do not recollect that there was
4 A. Huh-uh. (Negative response.)	4 a discussion of Turner School of Theology.
5 Q. Did he ask you anything about the bank?	5 Q. How long did your telephone call with
6 A. Well, his comment was, well, I don't know	6 Mr. Shlesinger last on Monday morning? Do
7 anything about them up here in Virginia.	7 you remember?
8 Q. So what did you tell him about people's	8 A. I do not recall, but it would have been
9 knowledge of Regions in Montgomery?	9 more than -- it would not have been more
10 A. That was not discussed.	10 than ten minutes -- ten to 15 minutes
11 Q. Well, did you tell him it was a well-known	11 Q. Prior to calling Mr. Shlesinger, did you
12 bank in Alabama?	12 take a look at the White Pages to see if
13 A. Regions Bank, Regions University, Troy	13 there are any other Regions institutions?
14 Bank & Trust, Troy University, Tuskegee	14 A. I did not.
15 University, First Tuskegee Savings, Regal	15 Q. Have you ever looked at the White Pages to
16 Bank, Regal University -- it's service, and	16 see if there are any other Regions
17 those are my concepts.	17 institutions?
18 Q. Did you tell him that Regions was a	18 A. I looked Saturday to see if Regions
19 well-known bank in Alabama when you spoke	19 University was in the White Pages -- of
20 to him?	20 this past week.
21 A. No, I just said there's a Regions Bank.	21 MR. PECAU: Let's mark this as the
22 Q. So as far as you know, Mr. Shlesinger	22 next exhibit, please.
23 didn't know that Regions was the largest	23 (Exhibit 29 was marked for
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1 bank in Montgomery?	1 identification.)
2 A. I don't know what Mr. Shlesinger understood	2 Q. Let me show you Exhibit 29. Do you
3 or knew. I asked him to do a trademark	3 recognize that as the BellSouth White and
4 review, research, however you would	4 Yellow Pages for Montgomery?
5 describe it, which both of you as attorneys	5 A. Yes
6 would understand that a lot better than I	6 Q. Let's go to page 88. Do you see Regions
7 would.	7 Bank there?
8 And I am not a legal counsel in that	8 A. Yes
9 area, and I would not want to put that --	9 Q. See any other Region -- Regions marks
10 put myself out to give you that kind of	10 there?
11 description of what was going on in his	11 A. Not in this book, I don't.
12 mind.	12 Q. So all you see on --
13 Q. So you don't know whether he knew it was	13 A. I do see some Regional.
14 the largest bank in Alabama or not?	14 Q. Right, but I didn't ask you about Regional,
15 A. No, sir, I don't know.	15 did I?
16 Q. Okay. Did you tell him at that time that	16 So the only Regions that you see in the
17 Regions had a Regions University?	17 Montgomery White Pages is beginning about
18 A. No.	18 two-thirds of the way down, Regions Bank,
19 Q. Did you tell him about the searches that	19 and on the next page about -- all the way
20 you did concerning Regions when you spoke	20 down to Regions Financial Leasing and then
21 to him on the phone?	21 Regions Mortgage; is that correct?
22 A. I don't recollect that I did.	22 A. That's what I see.
23 Q. Did you tell him that -- with respect to	23 Q. And there are no other Regions, right?

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<p>1 A. Yes, I do.</p> <p>2 Q. And one of the reasons they might reject it 3 is on the grounds of likelihood of 4 confusion as to sponsorship or affiliation 5 with one or more --</p> <p>6 A. Okay.</p> <p>7 Q. Is it your understanding that's a reason to 8 reject the use of a mark?</p> <p>9 A. Mr. Pecau, you're looking at someone who 10 has no real knowledge of trademarks and at 11 best, I'm totally inadequate and I must 12 leave this to the trademark attorneys and 13 so forth and so on. I just know that when 14 you're talking to a board who has no more 15 background than I would have and would have 16 less background of trademarks, that all 17 these things stated are going to be 18 important to them because it has come from 19 somebody who is in the trademark industry.</p> <p>20 Q. So the ground of likelihood of confusion 21 has no meaning to you? Is that what you're 22 saying?</p> <p>23 A. As to my -- You know, when we talk about</p>	<p>1 Mr. Shlesinger on July 27th?</p> <p>2 A. If I recall correctly, as he was closing 3 the day on the 26th, he either called or I 4 called and he just basically gave me a 5 synopsis of what he'd discovered. And I 6 asked him when he was going to send this, 7 and he said I will try to send it in the 8 morning, and that's what he did.</p> <p>9 Q. Now, you said that the July 28th meeting of 10 the board of regents started at 2:00. How 11 long did that meeting last?</p> <p>12 A. I didn't time that.</p> <p>13 Q. Two hours? Three hours? Half an hour?</p> <p>14 A. I would say it was within an hour time 15 frame.</p> <p>16 Q. Okay. Was there any mention of the 17 Regions -- the financial institution in 18 that meeting that you recall?</p> <p>19 A. I do not recall, but I do not want to sit 20 here and say somebody did not mention it. I do not recollect.</p> <p>22 Q. Now, with respect to Exhibit 31, the three 23 whereas clauses, do you see that in the</p>
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<p>1 confusion here, I don't know what all he 2 means by likelihood of confusion as to the 3 sponsorship.</p> <p>4 Q. Okay. Now, with regard to Mr. Shlesinger's 5 e-mail, did he ever send you a letter 6 following up this e-mail, Exhibit 28?</p> <p>7 A. I don't recall whether he did or not.</p> <p>8 Q. Do you recall ever seeing the results of 9 the search that he might have done that 10 supported the things that he states in 11 Exhibit 28?</p> <p>12 A. I do not remember. I'll have to ask him.</p> <p>13 Q. So in terms of Regions University, he 14 doesn't refer to any other Regions marks in 15 his response, does he?</p> <p>16 A. Well, this e-mail and this documentation is 17 as it is. I mean, I can't add to or take 18 away from what he's expressed here.</p> <p>19 Q. And he doesn't identify any Regions marks 20 in his --</p> <p>21 A. If he has beyond this or whatever, we would 22 have to ask him.</p> <p>23 Q. Did you have a telephone call with</p>	<p>1 resolution?</p> <p>2 A. Yes.</p> <p>3 Q. Was it a part of the board's resolution 4 that the name Regions University would help 5 increase the institution's attractiveness 6 to potential students?</p> <p>7 A. We have been in the process of making 8 application to the State of Arizona. We 9 recently here about a month or two sent a 10 4000 book to them, trying to make 11 application to the State of Arizona. When 12 I go out there and they say Southern is 13 just not going to do well out here in 14 Arizona and I meet with the Chinese 15 ambassador and Christian is a problem, 16 where we have an Italian missionary who did 17 a lot of work in Italy and he looks at me 18 and he says, Rex, Southern is going to be a 19 real problem in Italy, you know, this is 20 the ramifications of attractiveness. We 21 don't like to have a turnoff with a name, 22 and that's where this is coming from.</p> <p>23 Q. Okay. So Regions -- So it was the board's</p>